IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25949 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HANSABEN CHAGANLAL ADALJA - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR ANSHIN H DESAI for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
MR LR PUJARI GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 24/12/2007

ORAL JUDGMENT

1.0 By way of this petition, the petitioners, who are legal heirs of the deceased-Pushpaben-the original owner of the property in question, have

prayed to quash and set aside the order dated 30.03.2006 as well as notice dated 21.06.2003 passed by the Deputy Collector-respondent No.2, herein.

2.0 The brief facts of the case are that the deceased Pushpaben C. Adalja purchased a property being Flat No.103 of Prakash Apartment for Rs.2,50,000/- vide registered Sale Deed No.8963 dated 13.10.2000.

2.1 In pursuance of that respondent No.2 issued notice dated 16.10.2000 to the deceased-Pushpaben alleging that the stamp duty paid by her in respect of the property in question was less as the market value of the said property was Rs.6,34,780/-, and directed her to pay the deficit stamp fees of Rs.63,480/-. Within thirty days of the issuance of the said notice an amount of Rs.38,480/- was paid by the deceased-Pushpaben towards the stamp duty. Thereupon, respondent No.2 issued another notice dated 09.04.2001 calling upon the deceased-Pushpaben to remain

present before it on 23.04.2001. The deceased-Pushpaben was there after issued another notice dated 21.06.2003 for appearing personally before the respondent No.1. The deceased-Pushpaben remained present before respondent No.2 on the appointed date and produced the carpet area statement issued by a Government approved valuer showing that the carpet area of the property in question was 40.44. sq.yds. As per the Government Notification dated 30/09/1991 STP 1087-1862-HI if the carpet area of a residential premises is less than 50 sq.mts., then it is exempted from the payment of stamp duty. However, without taking into consideration the aforesaid statement of the property and the Government Notification, respondent No.2 passed the final order.

2.2 Being aggrieved and dissatisfied with the same, the deceased-Pushpaben preferred appeal against the aforesaid order. However, due to her old age and lack of resources, the deceased-Pushpaben failed to deposit the 25 per cent amount of the deficit stamp duty within

stipulated time, as per the requirement. Therefore, the appeal preferred by the deceased-Pushpaben was rejected by the appellate authority on the ground of delay. Hence, the present petition.

3.0 Mr. Desai, learned Advocate for the petitioners has submitted that neither any material is supplied nor any reasons are assigned for the valuation done by the respondent No.2 and that the notice has been issued in a cyclostyled form by filling up blanks.

3.1 He has further submitted that the respondent No.2 ought to have taken into consideration the statement of area of the property in question produced by the deceased-Pushpaben as well as the notification dated 30.09.1991 issued by the Government.

4.0 Heard learned Counsel for the parties and perused the documents placed on record it

transpires that respondent No.2 has not supplied any material to the petitioner on the basis of which the valuation of the property has been determined. In that view of the matter here it would be relevant to refer to decision of this Court in the case of ***"B.M. Bharwad Vs. State"*** reported in 2005(2) GLR 1792 wherein ***it has been observed that it is the statutory duty of the Officer to convey in the notice the material on the basis of which the valuation of the property has been determined***.

4.1 In the case on hand, the respondent No.2 has not supplied any material to the petitioner on the basis of which the valuation of the property of the petitioner was determined. Respondent No.2 has also failed to take into consideration the statement of carpet area of the property in question as well as the Government resolution dated 30.09.1991 wherein it has been stated that residential premises having carpet area less than 50 sq.mts. are exempted from

payment of stamp duty.

4.2 The aforesaid fact shows that the respondent No.2 has passed the impugned order without applying his mind. Admittedly, neither any material has been supplied nor any reasons have been assigned by respondent Nos.2 while passing the impugned order.

4.3 The respondent No.2 is quasi-judicial Authority, and hence,being a quasi-judicial authority, it is required to supply the relevant material on the basis of which the valuation of the property of the petitioner was determined. Apart from that, it is also required to deal with the contentions raised by the parties concerned and to consider various provisions of the Act and the law laid down by this Court. I am, therefore, of the opinion that the ends of justice would be met if the matter is remanded to the respondent No.2 for its consideration afresh on merits.

5.0 In the result, the petition is allowed. The order dated 30.03.2006 as well as notice dated 21.06.2003 passed by the Deputy Collector-respondent No.2 are quashed and set aside. The matter is remanded to the respondent No.2-Authority for its consideration afresh on merits. The respondent No.2-Authority, after hearing the petitioner and after considering all the contentions raised before it, shall pass a reasoned order without being influenced by the order passed by this Court. Rule is made absolute. No order as to costs.

(M.D. Shah,J.)

Umesh/